

## **EXHIBIT A**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   IN AND FOR THE DISTRICT OF DELAWARE

3                   - - -  
4     THERMO FINNIGAN LLC,       :     Civil Action  
5                                    :  
6     Plaintiff,                :  
7                                   :  
8     v.                        :  
9                                   :  
10    APPLERA CORPORATION,      :  
11                                :  
12     Defendant.               :     No. 04-1505 (GMS)  
13                   - - -

14                   Wilmington, Delaware  
15                   Wednesday, April 27, 2005  
16                   10:00 a.m.  
17                   In Chambers  
18                   - - -

19                   BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

20                   APPEARANCES:

21                   FREDERICK L. COTTRELL, III, ESQ.  
22                   Richards, Layton & Finger  
23                   -and-  
24                   WAYNE L. STONER, ESQ., and  
25                   STEPHEN M. MULLER, ESQ.  
16                   Wilmer Cutler Pickering Hale and Dorr LLP  
17                   (Boston, Massachusetts)

18                   Counsel for Plaintiff

20                   JOSY W. INGERSOLL, ESQ.  
21                   Young Conaway Stargatt & Taylor, LLP  
22                   -and-  
23                   WALTER E. HANLEY, JR., ESQ.,  
24                   JAMES GALBRAITH, ESQ., and  
25                   WILLIAM JAMES, ESQ.  
17                   Kenyon & Kenyon  
18                   (New York, New York)

19                   Counsel for Defendant

1 will.

2 I guess, Your Honor, I would like to have the  
3 actual trial plan addressed at a later time.

4 MS. INGERSOLL: But just reserve, say, 12 days,  
5 which would cover the possibility.

6 MR. HANLEY: I would like to be able to make a  
7 pitch later on, if it seems to make sense because of what  
8 has happened in the course of trial preparation, maybe there  
9 are issues that have been resolved on summary judgment,  
10 there might be a sensible alternative to a single unified  
11 trial.

12 THE COURT: Okay.

13 The way you should leave the room today is  
14 contemplating a joint trial, along the lines of what Mr.  
15 Cottrell has just outlined.

16 I will, when I go back, advise my schedulers  
17 that we should plan on a couple of extra days possibly. So  
18 we will leave a couple blanks, hopefully, there are blanks  
19 there.

20 We are turning again to the specifics of the  
21 schedule for the 1230 and 110 case. The Court is in accord  
22 with the dates that have been proposed up through the  
23 Markman hearing, which will takes place on January 9  
24 beginning at 10:00 a.m.

25 Let me say a few things about the Markman

1                   THE COURT: I think this is the second one.

2 It's amazing. As you know, around here, we play Russian  
3 Roulette every day.

4                   This is not a multiple booking, by the way. But  
5 we do have to do that. Otherwise we would be out in '08 for  
6 sure.

7                   Okay. We will want a referral to the Magistrate  
8 Judge as to this one as well. And you can get it back to me  
9 the same time as the other.

10                  Once the schedule is electronically approved, we  
11 will -- your pretrial order form is on my website. Counsel  
12 in this room have it.

13                  MR. COTTRELL: Just to make clear, Your Honor,  
14 for the two cases that are tried together, we still need to  
15 do a separate one for each? Or should we just combine?

16                  THE COURT: You can just combine them. Does  
17 anyone have a different view?

18                  MS. INGERSOLL: No. The schedule is the same.

19                  THE COURT: The schedule is the same.

20                  MS. INGERSOLL: I will do that one.

21                  MR. COTTRELL: We will put in there for the  
22 clerk's benefit consolidated so when we file papers, we  
23 don't get a call saying you've got to file in the other  
24 case, too. We can take care of that, Your Honor. We don't  
25 have to take your time.

## **EXHIBIT B**

## Jury Trial -- Volume C

## CondenseIt™

Wednesday, March 6, 2002

	Page 423	Page 425
1	- VOLUME C -	
2	IN THE UNITED STATES DISTRICT COURT	
3	IN AND FOR THE DISTRICT OF DELAWARE	
4	---	
5	APPLERA CORPORATION, MOS, INC., : CIVIL ACTION	
6	and APPLIED BIOSYSTEMS/MOS SCIEX, :	
7	Plaintiffs, :	
8	vs. :	
9	MICROMASS UK LTD. and	
10	MICROMASS, INC., :	
11	Defendants :	
12	NO. 2000-105 (RRM)	
13	Hilmington, Delaware	
14	Wednesday, March 6, 2002	
15	9:00 o'clock, a.m.	
16	BEFORE: HONORABLE RODERICK R. MCKELVIE, U.S.D.C.J., and a	
17	jury	
18	APPEARANCES:	
19	MORRIS, NICHOLS, ARSHT & TUNNELL	
20	BY: JACK B. BLUMENFELD, ESQ.	
21	-and-	
22	Official Court Reporters	
23		
24		
25		
1	APPEARANCES (Continued):	Page 424
2	KENYON & KENYON	
3	BY: JAMES GALBRAITH, ESQ.,	
4	WALTER E. HANLEY, JR., ESQ.,	
5	LEWIS V. POPOVSKI, ESQ.,	
6	JEFFREY S. GINSBERG, ESQ. and	
7	HUAYA WU, ESQ.	
8	(New York, New York)	
9	Counsel for Plaintiffs	
10	RICHARDS, LAYTON & FINGER	
11	BY: ROBERT W. WHETZEL, ESQ.	
12	-and-	
13	LATHAM AND WATKINS	
14	BY: JAMES G. HUNTER, ESQ.,	
15	KENNETH G. SCHULER, ESQ. and	
16	KEVIN C. MAY, ESQ.	
17	(Chicago, Illinois)	
18	Counsel for Defendants	
19	---	
20		
21		
22		
23		
24		
25		
1	please.	Page 426
2	I am sorry. I must have the wrong one. It is	
3	this one.	
4	CROSS-EXAMINATION	
5	CONTINUED	
6	BY MR. HUNTER:	
7	Q. Dr. Enke, do you recognize the demonstrative that is	
8	up on the screen here?	
9	A. Yes, I do.	
10	Q. You testified yesterday at some length about this	
11	demonstrative as showing the process of collisional	
12	focusing that is the subject of the '736 patent, did you	
13	not?	
14	A. Yes. I indicated that this represented collisional	
15	focusing.	
16	MR. HUNTER: Yesterday, Dr. Enke in his direct	
17	examination testified at some great length, with Mr.	
18	Hanley examining him, about this as being a diagram that	
19	shows collisional focusing. I am sure that the jury, when	
20	it looked at this, viewed this as basically showing that	
21	there was the equivalent of a rifle shot out of the end	
22	of the AC-only rod set in the collisional focusing process,	
23	so that essentially what you will see here, if you believe	
24	this demonstrative that Mr. Hanley used and that the	
25	witness testified at length about, virtually 99 percent of	

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## Condenselt™

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1	(Witness excused)	
2	---	
3	MR. HANLEY: Ladies and gentlemen, I want to	1 University of Alberta Hospital as a mass spectroscopist
4	introduce another lawyer on our team, who I didn't	2 in charge of drug analysis for the Commonwealth Games.
5	introduce to you the other day. This is Lew Popovski. He	3 The Commonwealth Games are very similar to the Olympic
6	is also with Kenyon & Kenyon, my law firm. He is going to	4 Games, except they only involve countries from the British
7	conduct the examination of the next witness.	5 Commonwealth, Canada, Australia, Great Britain, New Zealand,
8	---	6 and so on.
9	... WILLIAM R. DAVIDSON, having	7 Later that year, I joined Sciex Inc., as it was
10	been duly sworn as a witness, was examined	8 called then, as a senior research scientist. In 1981, MDS
11	and testified as follows ...	9 Health Group Limited purchased Sciex. And we became part
12	MR. POPOVSKI: Your Honor, ladies and gentlemen	10 of the MDS Health Group set of companies.
13	of the jury: Our next witness, Dr. William Davidson, is	11 In 1996 -- I am sorry, 1983, I was promoted to
14	the Vice President of Science and Technology at MDS Sciex.	12 the Director of Research and Development. In 1996, MDS
15	Dr. Davidson is going to testify on a number	13 Health Group Limited changed its name to MDS, Inc. and
16	of important topics. I will try to introduce each one of	14 Sciex became known at that time as MDS sciex.
17	these topics as they come up so you have some contextual	15 In 1997 I was promoted to Vice President of
18	placement for these topics.	16 Research, and in 1999 further promoted to Vice President
19	The first topic we are going to start with is	17 of Science and Technology.
20	some background history on Dr. Davidson as well as some	18 Q. Thank you, Dr. Davidson. I would like you to turn
21	background history on the company that Dr. Davidson works	19 to Tab 1 of your witness book, PX-372. Do you recognize
22	for.	20 this document?
23	DIRECT EXAMINATION	21 A. This is an Industry of Canada certificate of
24	BY MR. POPOVSKI:	22 amendment under the Canadian Business Corporations Act.
25	Q. Dr. Davidson, thank you for coming here.	23 On Page 2 you can see MDS Health Group Limited, so MDS
		24 Health Group Limited had changed its name then to MDS,
		25 Inc. That occurred on the 10th -- anyway, this occurred
	Page 556	Page 558
1	Would you please tell us who you work for?	1 on the 10th of October, 1996.
2	A. Yes. I am the Vice President of Science and	2 Q. Please turn to Tab 2 of your witness book, and that
3	Technology for MDS Sciex, which is a division of MDS, Inc.	3 is the now familiar copy of the '736 patent. You mentioned
4	Q. And as the Vice President of Science and Technology,	4 MDS Health Group Limited. Is that the same entity as this
5	what are your responsibilities?	5 group here?
6	A. Presently, my responsibilities are to seek out new	6 A. Yes. That's the same entity.
7	technologies and, when appropriate, to commercialize them	7 Q. It is designated the assignee of this patent?
8	under MDS Sciex.	8 A. It is, yes.
9	Q. And what types of new technologies do you seek out?	9 Q. With the name change, who now owns the patent?
10	A. Well, my major focus is on mass spectrometry and	10 A. MDS, Inc. now owns the patent, the '736 patent.
11	other bioanalytical instrumentation.	11 Q. Dr. Davidson, how many years have you worked in
12	Q. I called you Dr. Davidson. Could you please give us	12 the area of mass spectrometry?
13	a brief summary of your educational background?	13 A. I started in 1969, so that would be over 30 years.
14	A. Yes. In 1969, I graduated, had my undergraduate	14 Q. Would you please give us a little background history
15	degree with the University of Alberta, with a first-class	15 on MDS Sciex and its history?
16	honors degree in chemistry.	16 A. Yes. MDS Sciex, or Sciex as it was known at the
17	I then completed a Ph.D. in chemistry in 1974	17 time, was formed in 1974. In fact, it was based on
18	at the University of Alberta, specializing in mass	18 technology, mass spectrometry technology that was used
19	spectrometry. Followed that with a post-doctoral	19 to analyze the surface of Mars, the atmosphere of Mars.
20	Fellowship at the University of California in Santa	20 Over the next few years, Sciex or MDS Sciex
21	Barbara for two and a half years, again specializing in	21 gained an international reputation in mass spectrometry
22	mass spectrometry, and lecturing in chemistry.	22 research product development and manufacture.
23	Q. Would you please give us some background on your	23 Over the past 25 years we have been very
24	employment history?	24 innovative and have several patents in the area of mass
25	A. In 1977 and early '78, I was working for the	25 spectrometry, including the '736 patent. We are a

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<p>1 A It's called the Quantum</p> <p>2 Q Do you know whether the Quantum is using the</p> <p>3 invention of the '736 patent?</p> <p>4 A Well, we've recently come across some literature.</p> <p>5 marketing literature that indicates that, or suggests, I</p> <p>6 guess, would be a better word, that they could be</p> <p>7 infringing some portion of the '736 patent, but we're a</p> <p>8 very cautious and conservative group when it comes to</p> <p>9 legal issues and certainly would not take any action until</p> <p>10 we had a lot more proof of that.</p> <p>11 Q Okay. When did MDSI acquire this literature about</p> <p>12 the Quantum?</p> <p>13 A We acquired it a few weeks ago, maybe a month ago</p> <p>14 Q Okay.</p> <p>15 MR. POPOVSKI: Your Honor, ladies and gentlemen</p> <p>16 of the jury, I'd like to change to a different topic and</p> <p>17 basically, while we're talking about history here, we'd like</p> <p>18 to talk about the history of the lawsuit, how the plaintiffs</p> <p>19 came to bring the lawsuit against the defendants.</p> <p>20 BY MR. POPOVSKI:</p> <p>21 Q Dr. Davidson, when did you first tell Micromass about</p> <p>22 the '736 patent?</p> <p>23 A It was in, I believe, early 1997 that we sent them a</p> <p>24 letter regarding that.</p> <p>25 Q Would you please turn to Tab 4 of your witness book</p>	<p>1</p> <p>2 A (Continuing) We weren't entirely sure that it was</p> <p>3 infringing. What we were doing is sort of seeking, well</p> <p>4 it looks like it could be infringing, please tell us why</p> <p>5 it isn't type of response. So you can see, in the top</p> <p>6 paragraph, we mentioned it was of considerable importance</p> <p>7 and we asked for their comments as soon as possible, within</p> <p>8 at least three weeks of the date of this letter.</p> <p>9 Q Did Micromass in fact respond to that letter?</p> <p>10 A Yes, they eventually responded.</p> <p>11 Q What did they say?</p> <p>12 A They said that the product concept in dispute did not</p> <p>13 infringe any valid claim of the patent. Surprisingly, they</p> <p>14 also further on in the letter mentioned that they didn't</p> <p>15 want to seek a license, which to us was strange, because</p> <p>16 we hadn't offered them one.</p> <p>17 Q Did that letter identify any references that</p> <p>18 Micromass brought to your attention?</p> <p>19 A Yes. The references that have been mentioned many</p> <p>20 times over the last few days were brought to our attention.</p> <p>21 Q What did MDS Sciex do with those articles and</p> <p>22 references?</p> <p>23 A Well, we reviewed them internally, and our scientists</p> <p>24 couldn't see the particular relevance of them, because most</p> <p>25 of them related to collision cells for triple quadrupoles.</p>	
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<p>1 where you will find a document marked PTX-198 and tell me</p> <p>2 if you recognize that document?</p> <p>3 A Yes, this is the letter that our attorney, Richard</p> <p>4 Parr, (phonetic) sent to Micromass in January 10th, 1997.</p> <p>5 As you can see in the second paragraph, we informed them</p> <p>6 of the existence of this patent. We were concerned that</p> <p>7 one of their potential products that was coming out, it</p> <p>8 appeared that it could infringe this, the claims. And we,</p> <p>9 and you can see in the bottom, bottom paragraph, we --</p> <p>10 ---</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 whereas ours was an ion guide. But we were a very</p> <p>2 conservative bunch, and we decided to have -- instead of</p> <p>3 getting into arguments back and forth with Micromass, we</p> <p>4 decided to have an independent third party, disinterested</p> <p>5 third party, look at the patent and at the references,</p> <p>6 and come up with, again, an independent decision.</p> <p>7 Q Please tell the jury who this third party was?</p> <p>8 A Yes. The third party was the United States Patent</p> <p>9 Office, and we were going to do that through their</p> <p>10 re-examination process.</p> <p>11 Q Is it your understanding that you could seek that as</p> <p>12 well as others?</p> <p>13 A Yes. It was pointed out in an earlier witness that</p> <p>14 we could seek it or any individual could seek the</p> <p>15 re-examination of the '736 patent.</p> <p>16 Q In this re-examination, did MDS Sciex give to the</p> <p>17 Patent Office every reference that was given to them by</p> <p>18 Micromass?</p> <p>19 A Yes. I think, as pointed out in one of the last</p> <p>20 slides that was put up there, all of the references that</p> <p>21 were given to us from Micromass, and I believe a couple of</p> <p>22 others, also, were given to the re-examination office.</p> <p>23 Q Are you aware of any references co-authored by Dr.</p> <p>24 Luke Hanley and Dr. Scott Anderson?</p> <p>25 A Yes. I recently became aware of them.</p>	

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<p>1 Q Did you provide the Patent Office with a copy of 2 these references?</p> <p>3 A No At that time we were not aware of these 4 references and they were not among the references that 5 Micromass gave to us at the time back in 1997</p> <p>6 Q When did you become aware of these references?</p> <p>7 A I became aware of these references through our 8 attorneys about a month ago. I think they were passed on 9 to our attorneys about a month ago, maybe five weeks. A 10 short time ago.</p> <p>11 Q Dr Davidson, would you please turn to Tab 5 of your 12 witness book?</p> <p>13 I ask you if you recognize this document, which 14 is marked as PTX-2?</p> <p>15 A. Yes. This is the re-examination certificate for the 16 '736 patent. And on the second page, up in this area here, 17 you can see that the patentability of Claims 1 to 24 is 18 confirmed. Of course, these new claims are added as well.</p> <p>19 So the U.S. Patent Office re-examined it and 20 claimed these claims were patentable.</p> <p>21 Q. After the re-examination was concluded, did you 22 undertake to determine whether Micromass was infringing 23 the re-examined '736 patent?</p> <p>24 A. Yes. We had one of our principal research scientists, 25 Bruce Thomson, look at -- carefully look at the Quattro</p>	Page 579	Page 581
<p>1 Ultima and take some measurements. And these measurements 2 he passed on to our attorneys.</p> <p>3 Q. What happened then?</p> <p>4 A. We sued Micromass.</p> <p>5 Q. Why did you sue Micromass?</p> <p>6 A. We feel very strongly in protecting our intellectual 7 property. It takes a lot of effort and a lot of money to 8 develop these kind of technologies in our field.</p> <p>9 We felt that if someone was utilizing this 10 technology that we had developed and protected, then we 11 should do something to, again, protect ourselves. I guess 12 you would look at it this way.</p> <p>13 So at that time, we felt that the best road 14 forward was to sue Micromass.</p> <p>15 Q. Have you filed a lawsuit against Thermal Finneghan 16 for their Millenium device?</p> <p>17 A. No. At this time we haven't filed a lawsuit against 18 Thermal Finneghan. Again, we have just suspicions, we don't 19 have facts or proof.</p> <p>20 Q. I said Millenium. I meant to say Quantum?</p> <p>21 A. That's all right. I heard Quantum. So we have not 22 filed this because we don't have enough evidence at this 23 point in time to demonstrate without a doubt that they do 24 infringe. Again, we very conservative and we will wait 25 until we have further information before we carry forward</p>	Page 580	Page 582